

ESTTA Tracking number: **ESTTA648192**

Filing date: **01/05/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219522
Party	Defendant Gensco Laboratories, LLC
Correspondence Address	RANDY M. GOLDBERG RANDY M. GOLDBERG 1101 SW 71ST AVE PLANTATION, FL 33317-4123 intellectualproperty@rmgpa.com
Submission	Answer
Filer's Name	David L. Sigalow
Filer's e-mail	dsigalow@addmg.com, aimber@addmg.com
Signature	/David L. Sigalow/
Date	01/05/2015
Attachments	Answer and Affirmative Defenses.pdf(1219490 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

TROY HEALTHCARE, LLC,)	Opposition No. 91219522
)	TM App. Serial No. 86/092729
Opposer,)	
)	
v.)	
)	
GENSCO LABORATORIES LLC,)	
)	
Applicant.)	
)	
)	
)	

APPLICANT'S ANSWER AND AFFIRMATIVE DEFENSES
TO NOTICE OF OPPOSITION

Applicant GENSCO LABORATORIES LLC ("Applicant"), through its undersigned counsel, hereby submits its Answer and Affirmative Defenses to the Notice of Opposition ("Opposition") filed by TROY HEALTHCARE, LLC ("Opposer"). Applicant admits that it is the owner of U.S. Trademark Application Serial No. 86/092729 (the "'729 Application") for the mark **GOTPAIN** in International Class 5, which was published for opposition on October 28, 2014. Applicant denies that Opposer would be damaged by the registration of the '729 Application, and in support of registration, states as follows:

1. Applicant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 1 of the Notice of Opposition, and based upon such lack of knowledge or information, hereby denies same.
2. Applicant admits the allegations of Paragraph 2 of the Notice of Opposition.
3. Applicant admits that it is the owner of U.S. Trademark Application Serial No. 86/092729 for the mark **GOTPAIN** in International Class 5 and that this application was filed on

October 16, 2013 and published for opposition on October 28, 2014. As to the remaining allegations of Paragraph 3 of the Notice of Opposition, denies that Opposer will be damaged by the registration of the '729 Application.

4. Applicant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 4 of the Notice of Opposition, and based upon such lack of knowledge or information, hereby denies same.

5. Applicant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 5 of the Notice of Opposition, and based upon such lack of knowledge or information, hereby denies same.

6. Applicant admits that U.S. Trademark Registration No. 1744224 is directed to the mark **STOPAIN** as applied to goods within International Class 5. Applicant is, however, without knowledge or information sufficient to admit or deny the remainder of the allegations contained in Paragraph 6 of the Notice of Opposition, and based upon such lack of knowledge or information, hereby denies same.

7. Applicant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 7 of the Notice of Opposition, and based upon such lack of knowledge or information, hereby denies same.

8. Applicant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 8 of the Notice of Opposition, and based upon such lack of knowledge or information, hereby denies same.

9. Applicant admits that U.S. Trademark Registration No. 4485101 is directed to the mark **STOPAIN** as applied to goods within International Class 5. Applicant is, however, without knowledge or information sufficient to admit or deny the remainder of the allegations

contained in Paragraph 9 of the Notice of Opposition, and based upon such lack of knowledge or information, hereby denies same.

10. Applicant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 10 of the Notice of Opposition, and based upon such lack of knowledge or information, hereby denies same.

11. Applicant admits that U.S. Trademark Registration No. 4485116 is directed to the mark **STOPAIN (& DESIGN)** as applied to goods within International Class 5. Applicant is, however, without knowledge or information sufficient to admit or deny the remainder of the allegations contained in Paragraph 11 of the Notice of Opposition, and based upon such lack of knowledge or information, hereby denies same.

12. Applicant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 12 of the Notice of Opposition, and based upon such lack of knowledge or information, hereby denies same.

13. Applicant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 13 of the Notice of Opposition, and based upon such lack of knowledge or information, hereby denies same.

14. Applicant admits the allegations of Paragraph 14 of the Notice of Opposition insofar as the subject application speaks for itself.

15. Applicant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 15 of the Notice of Opposition, and based upon such lack of knowledge or information, hereby denies same.

16. Applicant admits the allegations of Paragraph 16 of the Notice of Opposition.

17. Applicant denies the allegations contained in Paragraph 17 of the Notice of Opposition.

18. Applicant denies the allegations contained in Paragraph 18 of the Notice of Opposition.

19. Applicant denies the allegations contained in Paragraph 19 of the Notice of Opposition.

20. Applicant denies the allegations contained in Paragraph 20 of the Notice of Opposition.

21. Applicant denies the allegations contained in Paragraph 21 of the Notice of Opposition.

22. Applicant denies each and every allegation not expressly admitted herein and hereby requests that the Opposition be denied.

AFFIRMATIVE DEFENSES

1. Opposer has failed to state a claim upon which relief can be granted.

2. Popover's U.S. trademark registrations as identified in Paragraphs 6, 9 and 11 of the Notice of Opposition are directed to goods, channels of trade and consumers which are distinguishable from Applicant's proposed goods, channels of trade and consumers, and are therefore unlikely to be confused with Applicant's mark **GOTPAIN**.

3. Opposer and/or Opposer's trademarks are not likely to be damaged or harmed by registration of Applicant's mark **GOTPAIN**.

WHEREFORE, Applicant respectfully requests that the Opposition be dismissed with prejudice and that the '729 Application permitted to proceed to registration; and such other relief as the Board deems just and proper.

Dated: January 5, 2015

Respectfully Submitted,



/David L. Sigalow/
David L. Sigalow, Esq.
Allison R. Imber, Esq.
Allen, Dyer, Doppelt, Milbrath
& Gilchrist, P.A.
255 South Orange Avenue
Orlando, FL 32801
Tel: (407) 841-2330
Fax: (407) 841-2343
aimber@addmg.com
dsigalow@addmg.com

Attorneys for Applicant

Certificate of Service

The undersigned hereby certifies that on this 5th day of January, 2015, a copy of the foregoing was served via email and first class mail, postage prepaid, on the following:

Nathan C. Brunette, Esq.
Steven T. Lovett, Esq.
Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, Oregon 97204-1268

Attorneys for Opposer

/Elizabeth Toney/